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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

FOO/145535

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 26, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on January 8, 2013, at West Bend, Wisconsin.

The issue for determination is whether the agency properly discontinued petitioner's FoodShare (FS) benefits due to excess income.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Julie Williamson, Lead Worker  
Washington County Department of Social Services  
333 E. Washington Street  
Suite 3100  
West Bend, WI 53095

**ADMINISTRATIVE LAW JUDGE:**

Michael A. Greene  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. Petitioner was receiving FoodShare (FS) benefits and submitted a six-month renewal form on November 5, 2012.

3. Based on the information provided on the six-month renewal form, the agency determined that petitioner's household income exceeded program limits. On November 15, 2012, the agency sent petitioner a notice of decision advising her that her FS benefits would end December 1, 2012.

### **DISCUSSION**

FoodShare (FS) is a joint federal-state program that is designed to improve the overall health of lower income households by enhancing their access to food. Eligibility and benefit levels are generally based on household size and income. At some point, household income may be so high as to make the household ineligible for benefits.

For purposes of FS, household income is determined prospectively based on income for the 30 days preceding the review, 7 CFR §273.10(c)(1). The agency properly used the information included on the six-month renewal form, which included information provided by the petitioner, including her affirmation that the amount of child support being received was unchanged.

However, 7 CFR §273.10(c)(1)(ii) provides, in part

...[T]he State agency shall not use past income as an indicator of income anticipating for the certification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. Similarly, if the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income.

Thus, the agency had several options open to it when it calculated petitioner's future income for the period beginning December 1, 2012. It could have operated seasonally or it could have averaged petitioner's income over a longer period. There is no evidence suggesting that petitioner did not contact the agency when she received the notice of decision; she may in any event have been of the view that nothing could be done since her benefits were being terminated. It is suggested in any event that petitioner reapply for FS if she has not already done so. In the meantime, the case will be remanded so that alternative means of determining income can be considered.

### **CONCLUSIONS OF LAW**

Where income fluctuates, the agency may use a longer period of time than 30 days in order to gain an accurate picture of anticipated income.

**THEREFORE, it is**

### **ORDERED**

That the matter be remanded to the agency with instructions to request income information from petitioner covering the period from May 2012 through October 2012 and recalculate petitioner's eligibility for December 2012 using her average household income for that period. If petitioner is eligible, the agency shall pay such allotment as is due, less any amounts already paid. If petitioner does not respond to the agency's request within ten (10) days, the petition for review shall be dismissed. The agency will begin its part of the process within ten (10) days of the date of this decision.

## REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 25th day of January, 2013

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\sMichael A. Greene  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 25, 2013.

Washington County Department of Social Services  
Division of Health Care Access and Accountability